

technical issue of federal jurisdiction in order to preserve the constitutional right guaranteed in Article III, Section 2 and modified subsequently to read that "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States."

III. This Court May Defer Deciding the Petition, Pending Further Developments in *Marshall*.

In the interest of justice, this Court can exercise its power to defer its decision on this instant petition for rehearing until the Ninth Circuit decides *Marshall*. In the *United States v. Ohio Power Co.*, 353 U.S. 980 (1957), this Court vacated an order denying a petition for rehearing and ordered that "the petition for hearing is continued." (1956)

Then, near the close of the next Term, this Court granted the petition for rehearing to be continued, vacated its denial of certiorari, granted the petition for a writ of certiorari and, finally, proceeded to reverse the judgment below. In support of this procedure, this Court stated:

We have consistently ruled that the interest in the finality of litigation must yield where the interests of justice would make unfair the strict application of our rules.

To continue this petition for rehearing until the Ninth Circuit issues its decision in *Marshall* would enable this Court to best serve the interests of justice. The broadest possible standard of conformity in federal jurisdiction, with only narrow interpretations of exceptions, whether in bankruptcy law or domestic relations claims in tort, would guarantee the intent of the Constitution.

Judge Lee's reliance on *Diaz v. Diaz*, 568 F.2d 106 (4th Cir. 1977) illustrates an illogical clash between federal tort law and the "domestic relations" exception (Pet. Writ, Appendix C, 17a). In *Diaz*, no divorce decree even existed. Yet, the plaintiff sought alimony and child support from federal sources of income. *Diaz* bore no relationship to this instant action where a decree of divorce has been entered and neither alimony nor child support are at issue.

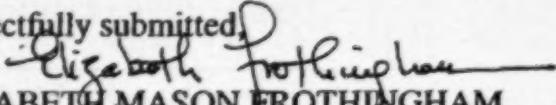
Based upon this Court's ruling in *Ankerbrandt* with its narrow interpretation of the "domestic relations" exception, the final judgment of the district court, affirmed by the Fourth Circuit in this instant case, must be reversed. This type of decision begs the intervention of this Court to restore logic to the use of case precedents.

CONCLUSION

A claim in tort based upon federal Title 10 statutory law and the Fifth and Fourteenth Amendments defeats the U.S. Army's motion to dismiss for lack of subject matter and is entitled to federal jurisdiction.

Wherefore, the petitioner respectfully requests that this Court grant her petition for rehearing of the previously denied petition for a writ of certiorari.

Respectfully submitted,


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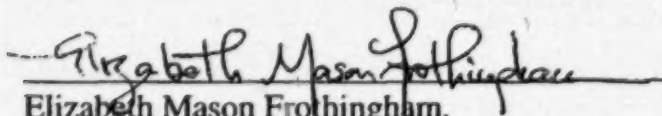
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CERTIFICATION PURSUANT TO RULE 44.2

The petitioner, proceeding *pro se* without benefit of counsel, certifies that this petition for rehearing is presented in good faith and not for the purposes of any delay. The contents of the petition for rehearing are limited to matters cognizable under Rule 44.2 of the Rules of this Court.


Elizabeth Mason Frothingham.
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